

2001

State of Utah v. Ronald Joe Minnish : Petition for Rehearing

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

14118 AR

IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH,

:

Plaintiff-Respondent, :

-v-

:

Case No. 14118

RONALD JOE MINNISH,

:

Defendant-Appellant. :

PETITION FOR REHEARING

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IN THE SUPREME COURT OF THE STATE OF UTAH

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-v- : Case No. 14118
RONALD JOE MINNISH, :
Defendant-Appellant. :

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IN THE SUPREME COURT OF THE STATE OF UTAH

STATE OF UTAH, :
Plaintiff-Respondent, :
-v- : Case No. 14118
RONALD JOE MINNISH, :
Defendant-Appellant. :

PETITION FOR REHEARING

Appellant respectfully petitions this court for a rehearing of its decision herein filed February 7, 1977.

Appellant is fully aware that to justify a rehearing a strong case must be made that this court must be convinced either that (1) it failed to consider some material point, (2) it erred in its conclusions, or (3) some matter has been discovered which was unknown at the time of the original hearing.

Appellant does not contend new matter has been discovered. Nevertheless, appellant does indeed contend this court committed error

¹ In re McKnight, 4 Utah 237, 9 P. 299 (1886).

in its conclusions and that it failed by its refusal to consider material points.

BRIEF IN SUPPORT OF
PETITION FOR REHEARING

DISPOSITION BY THIS COURT

In its decision filed February 7, 1977, this court held:

1. The trial court committed no error by excluding evidence of the character of the victim as to his propensity for violence and aggressiveness.
2. The trial court committed no error by its instructing the jury on the offense of second degree murder.
3. The trial court committed no error by submitting the matter to the jury on the evidence that was admitted.

STATEMENT OF FACTS

The statement of facts on pages 2, 3, 4, and 5 of the appellant's initial brief is incorporated by reference herein.

Added emphasis is here made to facts recognized by respondent in its initial brief on page 21, citing Tr. 111-116, and relied on by this court in its initial decision:

. . . the appellant came into the bar
after the deceased with a gun, knowing

it was loaded (Tr. 111-116)
He shot the deceased and proceeded
to point his gun at those people
inside the bar.

ARGUMENT

Point I

THIS COURT COMMITTED ERROR IN ITS
REASONING AND DECISION THAT THE
FACTS JUSTIFIED THE TRIAL COURT
INSTRUCTING THE JURY ON SECOND
DEGREE MURDER UNDER UTAH CODE
§ 76-5-203 (c).

Utah Code Annotated, Section 76-5-203 (1) (c) provides:

Criminal homicide constitutes murder
in the second degree if, under cir-
cumstances not amounting to murder
in the first degree or manslaughter,
the actor . . . acting under circum-
stances evidencing a depraved
indifference to human life, he reck-
lessly engaged in conduct which
creates a grand risk of death to
another and thereby causes the death
of another

This court in its initial decision held appellant's attack on
the trial court's instruction was without merit because (1) it was verba-
tim of the code provision pertaining to murder in the second degree,
(2) it was supported by a reasonable interpretation of the evidence, and
(3) it would permit the jury to determine that lives of other than the
victim were also endangered.

Of course it is elementary that an instruction is not always proper merely because it is verbatim of the code on the subject of the offense charged. There must be evidence to support the instruction. A careful reading of Utah Code Annotated, Section 76-5-203 (1) (c) as applied to the evidence admitted will graphically illustrate that it was error for the court to give it as an instruction.

First, there is absolutely no evidence whatsoever — none at all — not one scintilla — that appellant was acting under circumstances evidencing a depraved indifference to human life. And this is a pre-requisite for reckless conduct under Utah Code Annotated, Section 76-5-203 (1) (c) constituting murder in the second degree. Plain reckless conduct — without depravity — is provided for manslaughter under Utah Code Annotated, Section 76-5-205 (1) (a).

Depravity imports the highest grade of malice in the popular sense of ill will, hatred, spite, and evil intent.²

This court in its initial decision justified the trial court's instruction of Utah Code Annotated, Section 76-5-203 (1) (c) because the jury could determine that the lives of others than the victim were also endangered.

² 12 Words and Phrases 279, 280; Ramsey v. State, 114 Fla. 766, 154 So. 855.

Such reasoning imports the conduct of appellant toward others than the victim. Nowhere in the evidence did appellant act depraved toward others than the victim; i.e., he at no time imported to other than the victim "the highest degree of malice in the popular sense of ill will, hatred, spite, and evil intent."³ In fact, respondent admits on pages 4, 5, 21, and 22 of its initial brief that appellant pointed the gun at others than the victim after he had shot the victim.

Respondent's Statement of Facts, No. 11 (pages 4 and 5 of its initial brief) states:

Appellant went toward the door, was told to stop by one of the patrons; then he pointed the gun toward those inside, and then left (Tr. I - 38, 39, 51, 61).

Appellant's acts toward others after he shot the victim evidenced nothing depraved, actually nothing even dangerous. Merely pointing a gun at someone does not evidence a depraved indifference to human life, nor even danger per se.

Therefore, the verbatim instruction for Utah Code Annotated, Section 76-5-203 (1) (c) should not have been given by the trial court for murder in the second degree, because of the total absence of evidence of depraved indifference to the human life of others than the

³ 12 Words and Phrases 279, 280; Ramsey v. State, 114 Fla. 766, 154 So. 855.

victim.

CONCLUSION

This court should rehear this matter so that there may be briefed, argued, and decided a more complete analysis and decision pertaining to Utah Code Annotated, Section 76-5-203 (1) (c).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for Re-hearing was served on Robert B. Hansen, Utah State Attorney General, and William W. Barrett, Assistant Attorney General, by delivering three copies thereof to their offices at 236 State Capitol Building, Salt Lake City, Utah 84114, on the _____ day of March, 1977.
